



SECRETARY OF STATE  
**KEVIN SHELLEY**  
STATE OF CALIFORNIA

October 8, 2004

**URGENT**

**TO:** All County Clerks/Registrars of Voters (04340)

**FROM:**

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JOHN MOTT-SMITH  
Chief, Elections Division

**SUBJECT: HAVA ID REQUIREMENTS**

In its letter to the Secretary of State dated July 1, 2004, the U.S. Department of Justice expressed concern that many of the counties it monitored with respect to the March 2004 election failed to comply with HAVA and that steps needed to be taken to ensure compliance in California with HAVA at the November 2004 election. Of particular concern was county compliance with the "identification" requirements of HAVA. It is clear that the U.S. Department of Justice, and other interested individuals and organizations, will be closely monitoring all aspects of conducting the November 2004 election with particular focus on compliance with HAVA. In response to this letter from the USDOJ, our office met with CACEO, and also issued memos clarifying the HAVA requirements.

I know this mailing may seem repetitious, since it addresses a subject also addressed in at least two prior memos. We are sending this one for two reasons. One, as mentioned above, the implementation of the HAVA requirements is very important --- specifically that they be implemented accurately, completely, and uniformly. Second, we continue to receive communications from individuals and organizations monitoring the conduct of the upcoming election, and these communications express a consistent concern about an absence of uniformity among counties in applying HAVA's "proof of residency" requirements.

Elections Code section 2124 specifically requires the Secretary of State, by regulation, to adopt uniform standards for "proof of residency." The Secretary of State has done so. Please review 2 Cal. Code of Regs. 20107 and CCRoV #04030, issued January 1, 2003, as corrected October 1, 2004 via CCRoV #04327. These are also available on our web site at [http://www.ss.ca.gov/elections/hava\\_county\\_faq.htm](http://www.ss.ca.gov/elections/hava_county_faq.htm). These documents address many issues and should be read in conjunction with the following:

**1. It is critical that poll workers have a thorough understanding of the procedures to follow regarding HAVA-required “proof of residency.”** Since this requirement didn’t apply until this year, many poll workers and voters are not familiar with it. It must be a major component of all education and training programs.

**2. It is important that poll workers have a general understanding as to why “proof of residency” is required of some voters and not others.** This will be helpful in responding to questions from voters who may ask questions regarding the requirement. We suggest that poll workers and voters be advised along the following lines: “Federal law now requires that some first time voters in a county who have registered by mail provide ‘proof of residency’ prior to voting a regular ballot in a federal election. Otherwise, these voters are entitled to vote a provisional ballot.”

**3. “Registrations by mail” are limited to registration affidavits that bear a United States Postal Service postmark.** If registration affidavits do not have postmarks because they are delivered by third parties, the affidavits are not “registrations by mail” and the HAVA “proof of residency” requirements do not apply.

**4. Some first time voters in a county do not have to show “proof of residency”** in order to vote a regular ballot. For example, the requirement does not apply to registrants whose registration affidavit does not contain a postmark because it was delivered by a third party. The requirement does not apply if there has been verification of the name, date of birth and driver’s license number of the registrant against the DMV database. The requirement does not apply if the registrant included copies of appropriate documentation (see below) with his or her registration affidavit. Remember that any voter who does not present required “proof of residency” can vote a provisional ballot.

**5. Some voters who have voted previously may have to show “proof of residency.”** For example, if a voter registered by mail on or after January 1, 2003 and voted in the 2003 Recall Election but did not vote in the March 2004 Statewide Primary Election, the “proof of residency” requirement may apply since the 2003 Recall Election was not a “federal election.” Voting in a prior federal election (March 2004) may exempt a voter from having to show “proof of residency.” Remember that any voter who does not present required “proof of residency” can vote a provisional ballot.

**6. “Proof of residency” can be established by presenting EITHER a valid photo identification OR other documentation as specified in Regulation 20107.** A photo ID is not required if other documentation is provided, as set forth in the Regulation. Note that the Regulation is consistent with HAVA. The regulation clarifies what a “valid photo identification” or “other government document” is for purposes of the HAVA “proof of residency” requirement. Therefore, the documents listed in the Regulation apply and not just the documents listed in HAVA. The list of acceptable documents is contained in CCRoV 04030 issued on January 21, 2004 and corrected on October 1, 2004. NOTE THAT PURSUANT TO HAVA AND THE REGULATION, A “VALID PHOTO IDENTIFICATION” NEED NOT BE “GOVERNMENT ISSUED.”

7. **No “proof of residency” is required if a voter casts a provisional ballot.** This is true even for first time voters who have registered by mail that may otherwise be required to present “proof of residency” in order to vote a regular ballot.

8. **Voting by provisional ballot should not be discouraged if appropriate “proof of residency” is not presented.** The law specifically permits voting by provisional ballot if “proof of residency” is not presented for any reason.

9. **A voter may be required to present “proof of residency” in order to vote a regular ballot even if the voter has included a driver’s license number or partial social security number in his or her registration affidavit.** Only if there is a match of DMV records with the name, date of birth, and driver’s license number on the voter registration affidavit will the registrant that is otherwise required to present “proof of residency” be exempt from doing so. Many counties are currently unable to match the information on the registration affidavit with the DMV.

If you have any questions regarding the HAVA “proof of residency” requirements, please let me know.

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